IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

OP.No. 33839 of 2002(C)

PETITIONER:

M/S.CHAYA INDUSTRIES LTD., NEW
INDUSTRIAL DEVELOPMENT AREA, KANJIKODE,
PALAKKAD, REPRESENTED BY ITS GENERAL MANAGER.

BY ADV. SRI.PKM.HASSAN
SRI.FIROZ K.ROBIN

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF COMMERCE, NEW DELHI.

2. ASSISTANT COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE, COCHIN-9.

3. COMMISSIONER, CUSTOMS AND CENTRAL
EXCISE (APPEALS), CUSTOM HOUE, COCHIN-9.

4. THE DIRECTOR GENERAL OF FOREIGN TRADE,
MINISTRY OF COMMERCE, E.P.C.G. -II SECTION,
UDYOG BHAVAN, NEW DELHI-11.

5. MANAGER, CANARA BANK, PALAKKAD BRANCH,
XII/785, A.P.VASU MENON MEMORIAL MUNICIPAL
SHOPPING CENTRE, P.B.NO.7, SULTANPET,
PALAKKAD -678 001.

R1 TO 4 BY ADV. SRI.JOHN VARGHESE, SCGSC

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.57239/2002 IN O.P. NO.33839/2002

DISMISSED:

9.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF BANK GUARANTEE NO.4/96 DT.21.12.96 FOR RS.30,08,193/-.

P1(a): TRUE COPY OF DOCUMENT OF EXTENSION OF THE PERIOD UPTO 20.12.2002 OF BANK GUARANTEE 4/96.

P2: TRUE COPY OF THE PROCEEDINGS DT.10.5.2002 OF R4.

P3: TRUE COPY OF LETTER DT.27.5.02 SEND BY PETITIONER TO R4.

P4: TRUE COPY OF PROCEEEDINGS OF R4 DT.2.7.2002.

P5: TRUE COPY OF COMPUTER GENERATED BANK STATEMENT OF PETITIONER'S ACCOUNT.

P6: TRUE COPY OF LICENCE DT.9.8.95.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.33839 of 2002

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Dated this the 9th day of March, 2007.

JUDGMENT

The petitioner imported capital goods by paying concessional rate of duty under notification which authorised such import on condition of satisfying export obligation. However, petitioner appears to have obtained export obligation and discharge certificate from the Director General of Foreign Trade by misrepresenting facts i.e. by including exports made by others. Imported goods were released by the Customs based on DGFT certificate which was later withdrawn or modified by DGFT. Consequently Bank Guarantee executed along with bond was proposed to be encashed by the Customs against which W.P. is filed. Encashment of Bank Guarantee is in terms of the bond and what petitioner has to challenge is adjudication order issued by DGFT whereunder he has withdrawn or modified the original certificate. The O.P. is not maintainable without challenging the said order. In the circumstances, O.P. is dismissed leaving freedom to the petitioner to challenge the DGFT order, if there is any tenable ground for the same.

C.N.RAMACHANDRAN NAIR
Judge

pms